

# Citizens United not all to blame for growth of outside groups involved in political campaigns



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**BY JEFF BRINDLE**

## **COMMENTARY**

The U.S. Supreme Court is being blamed for the growth in independent, outside groups.

Early in the year, in *Citizens United v. Federal Election Commission (FEC)*, the court issued a broad ruling on campaign

finance.

Though the decision strongly supported disclosure, and upheld the ban on direct contributions by corporations and unions, it did find the prohibition against independent spending by these entities unconstitutional. Now, it is said, these groups are increasing their activity in political campaigns. Thus the spate of articles decrying the growth of so-called independent, outside groups, organized under the 527 and 501(c) sections of the IRS tax code.

Michael Luo wrote in *The New York Times* how these groups have become "powerful players" in this year's federal election. He refers to a "constellation of other legal developments since 2007" but ends by saying "it is the decision in *Citizens United v. Federal Election Commission* that remains the touchstone."

Another article written recently contains the same theme. Kenneth P. Vogel, in *Politico*, speaking of outside groups, states "Operatives and donors alike say the new aggressiveness, particularly on the right, is due largely to the signal sent by the Supreme Court's ruling in January in *Citizens United v. FEC*."

Citizens United has certainly helped to propel the growth of outside groups. But placing the blame wholly at the doorstep of the U.S. Supreme Court is simply wrong.

These so-called stealth groups were growing in influence prior to the issuance of the landmark Citizens United decision. The Democratic congressional victories in 2006 and 2008 were aided by such independent groups as move-on.org and Emily's List.

Now the more conservative groups like American Crossroads and the Chamber of Commerce are more engaged.

In truth, proliferation of these outside groups began following the enactment of the Bi-partisan Campaign Reform Act (BCRA), better known as McCain/Feingold.

McCain/Feingold contained many provisions. Two of the most impactful of those provisions, however, were the ban on soft money to political parties and the ban on corporate and union communications within 30 days of a primary and 60 days of the general elections.

McCain/Feingold is what started the stampede toward the creation of independent, outside groups; a development that has resulted in less transparency and less accountability in the area of campaign finance.

In an article I wrote in New Jersey Reporter in January of 2003, I predicted that this might be the case. And I wasn't alone. An editorial appearing in The Wall Street Journal at the time pointed out that one of the unintended consequences of McCain/Feingold is the redirecting of soft money into "shadow committees" like "Empowerment America (Democratic)" and the "American Spirit Fund (Republican)."

And that is exactly what happened.

So what is the lesson from this. It is not that the system should never be reformed but that legislators must be very careful in crafting reforms.

It is very important to anticipate the unintended consequences of reform and to weigh the positives against the negatives in moving forward.

In the case of McCain/Feingold it would have been better to place reasonable contribution limits on soft money, require disclosure, and not close off soft money to parties completely.

A Star-Ledger editorial was right when it commented at the time "Washington's wise guys winked when the law was enacted; no way, they said, would either party let that kind of campaign grease get away so easily. Were they ever right?"

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*The opinions presented here are his own and not necessarily those of the Commission.*